

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32 (2) (b))

Description of case

No. Criminal U/S 482 of Cr.P.C. 200, 11/2003 decided on 9/5/03

A.F.R. (Approved for reporting)

Not approved for reporting

Initials of Judge

Dated: 13/5/03

Note- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

Criminal Misc. Application No. 11 of 2003

Subhash Sharma and others

Petitioners

Versus

State of Uttarakhand And others

Respondents

Hon'ble M.M. Ghildiyal, J.

By means of this writ petition under section 482 Cr. P.C. the petitioners have challenged the order dated 22.12.2000 passed by the II Additional Chief Judicial Magistrate, Haridwar summoning the petitioners under sections 138/141 of Negotiable Instrument Act read with sections 420/424 I.P.C. and order dated 21.12.2002 passed by the Additional Sessions Judge/IV Fast Track Court, Haridwar dismissing the revision.

Brief facts of the case are that respondent no.2 alongwith the petitioners were directors of the Skyhigh Projects Limited. The respondent no.2 filed complaint under sections 138/141 of Negotiable Instrument Act and under sections 420/424 IPC before learned II Additional Chief Judicial Magistrate, Haridwar who after examination of respondent no. 2 on oath vide order dated 22.12.2000 summoned the petitioners under sections 138/141 of Negotiable Instrument Act and under sections 420/424 IPC. Aggrieved from the said order the petitioners have preferred revision, which was also dismissed by the Additional Sessions Judge/IV Fast Track Court, Haridwar. The petitioners have now filed this writ petition under section 482 Cr.P.C.

Heard Sri Alok Singh learned counsel for the petitioners, Sri Paresh Tripathi learned counsel for respondent no. 2 and learned G.A.

The submission of the petitioners is that the respondent no.2 has resigned from the directorship of the company and while resigning he has written in the letter itself that he has settled all accounts with the company and the amount which is payable by respondent no.2 to the company will be paid at a later date. This letter is dated 8.7.1996. Learned counsel for the petitioners has submitted that there were some blank cheque and letterhead pad of the company signed by the petitioners. He has further submitted that the respondent no.2 was in possession of the blank cheque of the company

and he has himself issued the aforesaid cheque in his favour, which were dishonoured because the account of the company was closed by that time. Learned counsel for respondent no.2 has denied the letter dated 8.7.1996. According to him no such letter was ever written or sent by respondent no. 2. He has further submitted that the letter is unsigned and cannot be relied upon. The whole controversy moves around this letter, the genuineness of which is doubtful. This court under section 482 Cr.P.C. cannot decide whether the letter dated 8.7.1996 was genuine or not and whether respondent no.2 was in possession of blank cheque of the company.

Learned counsel for the petitioners at the last has confined his prayer that personal appearance of the petitioners before learned trial court may be exempted and the petitioners may be permitted to appear through their counsel. On this point he has relied on the judgment of Apex Court in the case of **M/s Bhaskar Industries Ltd Vs. M/s Bhiwani Denim & Apparels Ltd. And others, reported in 2001(2) Apex Court Journals 316 (SC)** wherein the Apex Court in paragraphs nos. 17 to 19 has held as under:-

“17. Thus, inappropriate cases the magistrate can allow an accused to make even the first appearance through a counsel. The Magistrate is empowered to record the plea of the accused even when his counsel makes such plea on behalf of the accused in a case where the personal appearance of the accused is dispensed with. Section 317 of the Code has to be viewed in the above perspective as it empowers the court to dispense with the personal attendance of the accused (provided he is represented by a counsel in that case) even for proceeding with further the steps in the case. However, one precaution which the court should take in such a situation is that the said benefit need be granted only to an accused who gives an undertaking to the satisfaction of the court that he would not dispute his identity as the particular accused in the case, and that a counsel on his behalf would be present in court and that he has no objection in taking evidence in his absence. This precaution is necessary for the further progress of the proceedings including examinations of the witnesses.

18. A question could legitimately be asked- What might happen if the counsel engaged by the accused (Whose personal appearance is dispensed with) does not appear or that the counsel does not co-operate in proceeding with the case? We may point out that the legislature has taken care for such eventualities. Section 205 (2) says that the Magistrate can in his discretion direct the personal attendance of the accused at any stage of the proceedings. The last limb of section 317(1) confers a discretion on the Magistrate to direct the personal attendance of the accused at any subsequent stage of the proceedings. He can even resort to other steps for enforcing such attendance.

19. The position, therefore, bogs down to this: It is within the powers of a magistrate and in his judicial discretion to dispense with the

personal attendance of an accused either throughout or at any particular stage of such proceedings in a summons case, if the magistrate finds that insistence of his personal presence would itself inflict enormous suffering or tribulations to him, and the comparative advantage would be less. Such discretion need be exercised only in rare instances where due to the far distance at which the accused resides or carries on business or on account of any physical or other good reasons the magistrate feels that dispensing with the personal attendance of the accused would only be in the interests of justice. However, the magistrate who grants such benefits to the accused must take the precautions enumerated above, as a matter of course. We may reiterate that when an accused makes an application to a magistrate through his duly authorized counsel praying for affording the benefit of this personal presence being dispensed with the magistrate can consider all aspects and pass appropriate orders thereon before proceeding further.”

The contention of the petitioners is that they are residing at Ludhiana, State of Punjab whereas the case is going on in the district of Haridwar, State of Uttaranchal. Considering the plea that the petitioners are residing in a different State and at a far distance, in view of the aforesaid judgment of the Apex Court the petitioners can move application before the learned trial court for exemption of personal appearance of the petitioners and the learned trial court shall decide the same in view of the observations made by the Apex Court in the case (supra).

With these observations the writ petition is finally disposed of.

May 09, 2003.

Sd/-